



Digitally signed by  
Mary Beth de Beau  
DN: c=US, o=U.S.  
Government, ou=FEC,  
cn=Mary Beth de Beau  
Date: 2016.08.17  
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John W. Kern  
P.O. Box 503  
Houghton, MI 49931  
509-432-6400

August 16, 2016

1  
2  
3  
4 General Council  
5 Complaints Examination &  
6 Legal Administration  
7 Attn: Mary Beth deBeau  
8 999 E Street, NW  
9 Washington, DC 20436  
10

11 Dear Ms deBeau,

12 The following is my response as treasurer of the AJ Kern for Congress campaign, responding to Matt  
13 Stevens' complaint to the Federal Election Commission (MUR#7112).

14 **Summary of Complaint**

15 Mr. Stevens complaint alleging that our campaign violated labeling requirements defined in IRS 26 U.S.C.  
16 §6113 and 11 CFR 104.3(a)(4) is frivolous and was filed just prior to the August 9<sup>th</sup> primary for the sole  
17 purpose of harassing our campaign when our attentions should be focused solely on the task at hand—  
18 campaigning.

19 The Federal Election Commission notice was dated July 27<sup>th</sup>, and I received it on Friday August, 5<sup>th</sup> 2016  
20 after having been incorrectly forwarded to my personal post office box in Michigan. I notified the  
21 Federal Election Commission of having received it on Friday August 5<sup>th</sup> at 4:30 by leaving a telephone  
22 message, and followed up with the Commission Monday morning, again leaving a telephone message.

23 **Response:**

24 Mr. Stevens' complaints are frivolous, as our campaign has made every effort to meet the intent and  
25 letter of the law with regard to campaign fundraising, reporting and public disclosures required by the  
26 Federal Election Commission. Despite Mr. Stevens' awareness of our campaigning efforts since at least  
27 February, Mr. Stevens' complaint was well timed to inflict maximum harm on the AJ Kern for Congress  
28 campaign improperly using an FEC complaint as a means to harass the campaign.

29 As treasurer of the AJ Kern for Congress campaign I, to the best of my ability, fulfilled the letter and  
30 intent of the law with respect to 26 U.S.C. §6113. I also fulfilled and exceeded the intent of the law with  
31 regard to 11 CFR 104.3(a)(4), actually obtaining and reporting, as opposed to just requesting, employer  
32 and occupation information for every contributor with contributions exceeding \$200.00.

33 Regarding 26 U.S.C. §6113, the AJ Kern for Congress campaign has never raised money prior to the 2016  
34 election cycle, and therefore is not subject to tax status notifications described in 26 U.S.C. §6113 which  
35 is only applicable to campaigns "whose gross annual receipts normally exceed \$100,000<sup>1</sup>."

<sup>1</sup>Federal Election Commission Campaign Guide; Congressional Candidates and Committees, June 2014.

36 Mr. Stevens complaint regarding the "best efforts" clause of 11 CFR 104.3(a)(4) is restricted to  
37 fundraising on our internet website. Regarding these activities, I as treasurer personally contacted,  
38 asked for, obtained and reported the occupation and employer of every donor, from whom we received  
39 contributions on our internet portals (Paypal or GoFundMe) and which in aggregate, including other  
40 forms of payment, exceeded \$200.00.

41 In fact there was just one such donor who actually contributed more than \$200 and did so in part  
42 through our online portal via PayPal. As such there were no contributors who were not made aware of  
43 the occupation and employment reporting requirements, and no individuals objected to or expressed  
44 reservations upon having been asked for this information, irrespective of how they contributed. Any  
45 oversight related to labeling had no material effect on any contributors to our campaign.

46 I understand that there are labeling requirements, with respect to 11 CFR 104.3(a)(4) which I have  
47 reviewed and modified immediately upon receiving the FECs notification of a complaint against our  
48 campaign. Copies of the disclaimers as they currently appear on the web pages are attached as Exhibits  
49 1 through 3.

50 The AJ Kern for Congress campaign is composed entirely of volunteers and I, AJ Kern's husband, serve as  
51 campaign manager, treasurer and all other positions of responsibility in the campaign, other than  
52 candidate. I am a small business owner working as a statistical consultant for over 20 years and neither  
53 AJ nor I are career politicians. Our efforts to run a grass roots campaign on little or no funding,  
54 precluded employment of the team of lawyers and accountants that seem necessary to insure full  
55 compliance with FEC rules and regulations. Despite this challenge I would argue that we did very well at  
56 running an ethical campaign and accurately reporting our campaign receipts and expenditures.

57 As campaign manager, treasurer, chief information officer, all other campaign positions and husband, I  
58 am asking that the Federal Election Commission take no action against me or other members associated  
59 with the AJ Kern for Congress campaign and to close this complaint.

#### 60 **Backgroud Information**

61 Following is additional background information providing the FEC with a more complete picture of the  
62 circumstances of Mr. Stevens Complaint and a pattern of abuse of the legal process which former FEC  
63 commissioner Bradley A. Smith has previously identified as being problematic<sup>2</sup> for grassroots campaigns.

#### 64 **Endorsing Convention and Primary Results:**

65 Minnesota follows a caucus process through which parties endorse candidates prior to the primary  
66 election. AJ Kern challenged Congressman Emmer in the endorsing process coming within 11 delegates  
67 of forestalling the Republican endorsement, which required 60% of the vote total. The AJ Kern campaign  
68 identified a series of violations of caucus and endorsing convention rules throughout the endorsing  
69 process which were corroborated by BPOU officers and even one Minnesota State Senator. We filed our  
70 objections to Mr. Emmer's endorsement with the Minnesota State Republican Party and received no  
71 response from Mr. Keith Downey the Chair of the Minnesota Republican Party. As a result AJ Kern  
72 enrolled in the primary election. AJ Kern held Mr. Emmer to just 68% of the vote, winning Stearns

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<sup>2</sup> Bradley A. Smith key note address to the Editorial Board of the Catholic University Law Review,  
[http://www.fec.gov/members/former\\_members/smith/smithspeech01.html](http://www.fec.gov/members/former_members/smith/smithspeech01.html)

73 County outright and being the first challenger to hold a Minnesota Republican to less than 80% of the  
74 primary vote since 1962<sup>3</sup>—over 50 years ago. This all despite a 61 to 1 fundraising advantage for Mr.  
75 Emmer. This challenging environment set the stage for Emmer loyalists, including his Congressional  
76 Chief of Staff David Fitz Simmons and Matt Stevens, to help their congressman by filing frivolous FEC  
77 complaints against me, some of our contributors and the AJ Kern for Congress Campaign.

78 **Intent to Harass:**

79 On Friday, August 5<sup>th</sup>, The AJ Kern for Congress campaign received notification from the Federal Election  
80 Commission that Matt Stevens (Endorsing convention delegate from Senate District 30) filed a complaint  
81 against Kern's grassroots campaign for *alleged* fundraising irregularities. Mr. Stevens also filed a  
82 complaint with the Minnesota Campaign Finance & Public Disclosure Board against the Duff (Alan) 4  
83 House campaign<sup>4</sup>, Exhibit 4. Mr. Stevens was also seen commenting on social media alleging that former  
84 State Senator John Howe had inappropriately used Republican Party Mailing lists (Exhibit 5). In each of  
85 these cases, a challenger is facing an endorsed and or incumbent GOP candidate in the primary election.

86 Matt Stevens may not have even written the complaints himself. When challenged on this issue in an  
87 interview with Bob Davis, broadcast by podcast<sup>5</sup> Matt Stevens admitted to not having actually written  
88 the complaint against the Duff campaign, stating that the author was a , "friend of mine...he likes to stay  
89 out of politics...".

90 Since filing the complaint Mr. Stevens and other of Congressman Emmer's staff have continued to  
91 harass our campaign by 1) stealing copyright protected video from the AJ Kern for Congress YouTube  
92 channel which was later frozen by YouTube after our campaign filed a complaint with YouTube (Exhibit  
93 6).

94 Matt Stevens continues to threaten our campaign with additional complaints to the FEC on his Facebook  
95 page (Exhibit 7).

96 I have also learned from Kevin Durken, one of our campaign contributors, that Mr. David Fitzsimmons,  
97 Mr. Emmer's Congressional Chief of Staff in Washington DC has also filed a 6 point complaint, alerting  
98 the Federal Election Commission to the fact that my first quarter and pre-primary reports were filed  
99 late. As an experienced campaign veteran and now Congressional Chief of staff, Mr. Fitzsimmons  
100 undoubtedly must know that the FEC would provide notice to me as Treasurer, indicating that I would  
101 have until 5 pm on the 4<sup>th</sup> business day from date of the notice to file the report. As such Mr.  
102 Fitzsimmons complaints about late report filings inform the FEC of information already known to the FEC  
103 and as such suggesting that he is knowingly filing frivolous complaints.

104 **Encouragement From Congressman Emmer's Campaign**

105 In both 2014 and 2016 election campaigns, Mr. Emmer identified Matt Stevens as a "great conservative"  
106 chosen specifically by Mr. Emmer to represent him at the CD-6 endorsing convention—a member of  
107 Emmer's slate of delegates. Inviting precinct delegates to vote for Matt Stevens, and other key  
108 supporters, Mr. Emmer wrote, "When it comes time to choose delegates for the sixth district

<sup>3</sup> <http://editions.lib.umn.edu/smartpolitics/2016/08/10/tom-emmer-records-weakest-minnesota-gop-us-house-primary-win-in-50-years/>

<sup>4</sup> <https://www.scribd.com/document/319887154/CfbDuffTea>

<sup>5</sup> <http://thebobdavispodcasts.com/> Podcast 534-Bob Davis Podcast Radio Show-38.

109 convention, the delegates below are great conservative activists and some of my key supporters." (See  
110 Exhibits 8 and 9). Tom Identified Matt Stevens as a "key supporter"—a trusted campaign insider.

111 While boasting on Facebook about the campaign video that Matt Stevens stole from the AJ Kern for  
112 Congress Campaign YouTube Channel, Congressman Emmer's Chief of Staff, David Fitzsimmons<sup>6</sup>  
113 commented approvingly on Matt Stevens' site showing that Congressman Emmer's highest ranking  
114 congressional staffer was fully aware of Mr Stevens' frivolous complaint and showed his approval  
115 publicly. Additionally, Mr Matt Pagano<sup>7</sup>, Congressman Emmer's Political director, was also found egging  
116 Matt Stevens on saying "Still waiting for the progressive house remix version of this tirade" regarding  
117 the YouTube video that Matt Stevens had stolen and defaced. This Facebook backslapping undoubtedly  
118 provided a great deal of pride for Mr. Stevens, having been recognized personally by Congressman  
119 Emmer's Congressional Chief of Staff Fitzsimmons and (Exhibit 10) and his highest ranking campaign  
120 staffer Pagano (Exhibit 11).

121 Mr. Stevens had also received the support of Mr. Emmer on August 7<sup>th</sup>, when he thanked him on his  
122 congressional campaign Facebook page (Exhibit 11). In addition, Mr. Fitzsimmons' filing of complaint  
123 (MUR7115) suggests these complaints are, at a minimum, not discouraged by Congressman Emmer and  
124 may be fully within the campaign strategy.

125 A Twin Cities Daily Planet report suggests that Mr. Emmer may have used just this approach previously.  
126 They state that Congressman Emmer has a track record of filing harassing legal complaints against  
127 political opponents, stating in a July 9, 2010 article<sup>8</sup> that;

128 *"Emmer has filed four campaign finance complaints, two ethics complaints, two lawsuits and two formal*  
129 *requests for investigations. All have been dismissed – and none has resulted in punitive action against his*  
130 *opponents."*

### 131 **FEC Commissioner Bradley Smith on Frivolous Exploitation of FEC Complaint Process**

132 FEC rules & regulations are intended to protect the public from being misled by unscrupulous political  
133 operatives but, as FEC has identified, these rules can also be abused.

134 Former FEC commissioner Bradley Smith wrote<sup>9</sup>, "Charges and litigation are used to harass opposing  
135 candidates and make political hay with the press ...used most effectively by 'incumbents'."

136 Smith also wrote that, "Many, if not most, of these cases end up being dismissed, but not without  
137 distracting the campaigns and using up their resources."

138

139 I contend that Matt Stevens submitted this complaint with the federal government not with the  
140 intention of protecting the voters of CD-6 but rather to distract the Kern campaign during a critical point  
141 just prior to the primary.

<sup>6</sup> <http://www.startribune.com/minnesota-rep-fitzsimmons-will-lead-u-s-rep-emmer-s-staff/282172031/>

<sup>7</sup> <https://www.linkedin.com/in/matthewpagano>

<sup>8</sup> <http://www.tcdailyplanet.net/emmer-racks-complaints-against-opponents/>

<sup>9</sup> Bradley A. Smith key note address to the Editorial Board of the Catholic University Law Review,  
[http://www.fec.gov/members/former\\_members/smith/smithspeech01.html](http://www.fec.gov/members/former_members/smith/smithspeech01.html)

142 The FEC notification was dated July 27<sup>th</sup>, just 14 days prior to the primary election with a 15 day  
143 response deadline—forcing the Kern campaign, composed entirely of grassroots volunteers, to redirect  
144 scarce time and resources toward a response to this complaint.

145 This tactic isn't new. As discussed by the United States 8<sup>th</sup> Circuit Court of Appeals with regard to ballot  
146 initiatives, No 13-1229, cautioning that, "...it is immensely problematic that anyone may lodge a  
147 complaint..." when "...there is no promise or requirement that the power to file a complaint will be used  
148 prudently."

149 "Complaints can be filed at a tactically calculated time so as to divert the attention of an entire  
150 campaign from the meritorious task at hand of supporting or defeating a ballot question, possibly  
151 diffusing public sentiment and requiring the speaker to defend a claim before the OAH, thus inflicting  
152 political damage"<sup>10</sup>

153 The website Matt Stevens complained about was published in January of 2016, Mr. Stevens was a  
154 participant in the endorsing process starting with March 1," "Super Tuesday" caucuses, followed by  
155 BPOU conventions in March and April, culminating with the endorsing convention on April 23<sup>rd</sup>, yet Mr.  
156 Stevens filed no complaints, nor did he take the initiative to inform our campaign that there may have  
157 been a problem with our fundraising efforts. Rather Mr. Stevens allowed what he believed to be a  
158 campaign finance violation to continue over a period of months, finally deciding that it would be  
159 important to protect the public from being misled by our fundraising efforts just prior to the primary  
160 election. This can hardly be written off as coincidence. Our campaign has received no other complaints  
161 about our fundraising efforts or any other aspect of our campaign materials and efforts.

162 I find it exceedingly disappointing that Matt Stevens, a supposed fellow Republican Party Member, felt it  
163 most expedient to solve this problem by bringing in the heavy hand of the federal government, when  
164 one phone call would have easily rectified any possible disparities in a matter of minutes.

165 Much time, taxpayer money and campaign resources will be wasted resolving Mr. Stevens *frivolous*  
166 allegations.

167 A reasonable man would reach the conclusion that this abuse of federal power was only used to protect  
168 an incumbent Congressman from a political challenger. It was a dirty political tactic intended to distract  
169 an underfunded AJ Kern grassroots campaign composed exclusively of hardworking volunteers from  
170 their work challenging incumbent Tom Emmer.

171

172

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<sup>10</sup> <http://media.ca8.uscourts.gov/opndir/14/09/131229P.pdf>



John W. Kern  
P.O. Box 503  
Houghton, MI 49931  
509-432-6400

Exhibit 2.



## Continue to AJ Kern for Congress

Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200.00 in a calendar year.

If you contribute over \$200.00 to AJ's campaign in this election cycle you will receive an email, phone call or letter requesting this information. You may help us by sending this information to us when you contribute, by mail, email or telephone call.

We are also informing you that your contributions to AJ's election campaign are not tax deductible.

Paid for and Approved By AJ Kern For Congress

Figure 2. <https://ajkern.com/>

110004440001

Exhibit 3.

gofundme Search Help Donate Fundraiser

**AJ KERN FOR CONGRESS**

Approved by AJ Kern. Paid for by AJ Kern for Congress.

Share Tweet Donate

**\$816** of \$10k goal

Raised by 17 people in 2 months

Donate Now

Share on Facebook

Created Mar 24, 2015

**AJ Kern**   
 Chairman   
 9 SAUK RAPIDS, MN

Recent Donations

- \$100** Anonymous 11 days ago
- \$79** Dave S. Beth Lebrun 3 days ago   
 Go AJ !!
- \$25** Tanya Mart in 22 days ago
- \$17** Anonymous 21 days ago
- \$40** Anonymous 1 month ago
- \$50** Anonymous 1 month ago

**AJ Kern for Congress**

Share Tweet 312 shares

**Federal Election Commission Disclaimer:**  
 Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$500 in a calendar year.

We are also informing you that your contributions to AJ's election campaign are not tax deductible.

Per the notification above, if you contribute over \$200 to AJ's campaign in this election cycle you will receive an email and or telephone call from the campaign requesting this information, or please send this information to us directly by email.

If this is all sounding too complicated, feel free to send a check payable to AJ Kern For Congress at P.O. Box 205, Sauk Rapids MN 56379.

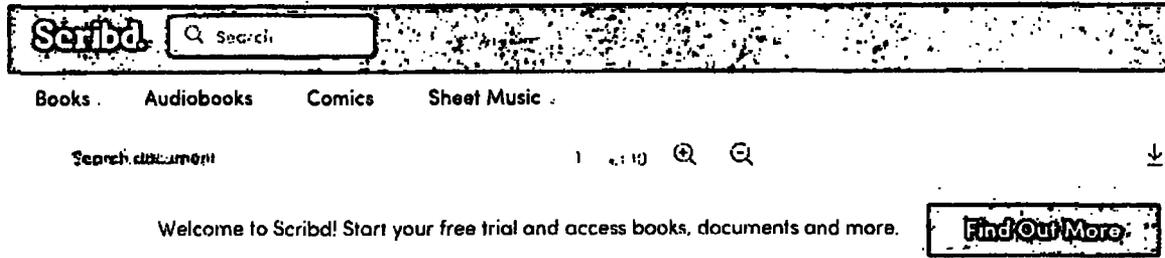
And if you are still reading, here is AJ's message.

AJ Kern For Congress!

Constitutional Conservative Running a Grassroots Campaign for US House of

Figure 3. <https://www.gofundme.com/AJKernForCongress>

Exhibit 4.



**Campaign Finance & Public Disclosure Board**  
ATTN: Mr. Gary Goldsmith  
Executive Director  
Suite 190, Centennial Building  
658 Cedar Street  
St. Paul, MN 55155

**Complainant:**  
Matt Stevens  
  
Elk River, MN 55330

**Violators:**  
Duff (Alan) 4 House  
28555 Bay Shore DR NW  
Isanti, MN 55040

MN Tea Party Alliance  
13901 Washington St. NE  
Ham Lake, MN 44304

New Leadership PAC  
PO Box 44522  
Eden Prairie, MN 55344

---

**Complaint for Violation of the Campaign Finance and Public Disclosure Act**

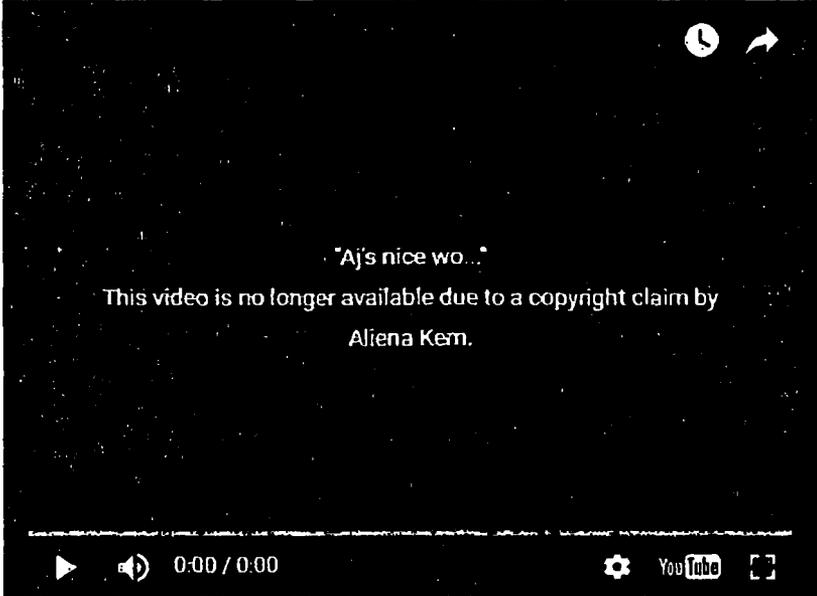
Figure 4. Matt Stevens complaint to the Minnesota Campaign Finance & Public Disclosure Board.



Exhibit 6.

 **Matt Stevens**  
August 8 at 12:02am Elk River ↕

Best of AJ Kern's video about me



Aj's nice wo...  
This video is no longer available due to a copyright claim by  
Aliena Kern.

▶ 🔊 0:00 / 0:00 ⚙️ YouTube 🗄️

Aj's nice words about me  
clipfromAJ Kern's youtube  
YOUTUBE.COM

Figure 6. Matt Stevens violating copyright laws and defacing AJ Kern for Cnngress copyright protected video.

Exhibit 7.

Write a comment...

John Kern <http://editions.lib.umn.edu.../tom-emmer-records.../>

### Tom Emmer Records Weakest Minnesota GOP US House Primary Win in 50+ Years | Smart Politics

Tom Emmer Records Weakest Minnesota GOP US House Primary Win in 50+ Years By Dr. Erik Ostermeier August 10, 2016 No incumbent Minnesota Republican U.S. House member had won less than 80 percent of the primary vote since 1962 While his renomination victory was never in doubt, Minnesota U.S. Represent...

EDITIONS.LIB.UMN.EDU

Like Reply Remove Preview 12 hrs

 **Matt Stevens** Hey John now that you finally got around to filing your pre-primary report I noticed there was no mention of the semi-trailer that was used at the convention I didn't see anything in the report about it. At best it's an omission if individual owned, if it's held under a corporation that's a bigger deal, do I need to write another complaint.

Like Reply 3 11 hrs

Write a reply...

 **Judd Mowry** Based on her comments, should her campaign be deemed in violation of the FEC Rules & Regulations, one would have to assume (as she herself admits on camera), that she ran an unscrupulous campaign.

Like Reply 2 7 hrs

 **David FitzSimmons** SAD!

Like Reply 6 August 9 at 10:59pm

 **Bryan Strawser** Ha ha ha!

Like Reply Yesterday at 5:20am

Figure 7. Matt Stevens threatening more frivolous FEC complaints against AJ Kern campaign.

2016

# EMMER for CONGRESS

Thank you for coming to the Senate District 30 RPOU convention today!  
When it comes time to choose delegates for the Sixth District convention, the delegates below are  
great conservative activists and some of my key supporters.

The Emmer Campaign would appreciate your votes for these 20 individuals for delegates to the  
Sixth District Convention:

KEN ANDERSON ✓  
 GAY BUNCH-HULSE ✓  
 BRANDON BURGOYNE ✓  
 MICHAEL BURGOYNE ✓  
 ROBERT EIDEM ✓  
 ANDREW HULSE ✓  
 MARRY KIFFMEYER ✓  
 RALPH KIFFMEYER ✓  
 JUDD MOWRY ✓  
 EMILY NOVOTNY ✓

*Emily Novotny*  
 PAUL NOVOTNY ✓  
 DANNY NYGAARD ✓  
 SYDNEY NYGAARD ✓  
 JOAN PARSAKALIEH ✓  
 PAUL SEEFELD ✓  
 MATI STEVENS ✓  
 MAE THOMPSON ✓  
 RON TOUCHETTE ✓  
 CHAD WESTBERG ✓  
 NICK ZERWAS ✓

*Bette Zerwas*

PO Box 998 Anoka, MN 55303 — 9175 Quaday Ave NE, #112, Otsego, MN 55330

Figure 8. Congressman Emmer identifying the complainant Matt Stevens as a "Key Supporter" in 2016. This list of delegates was handed out to approximately 100 precinct delegates encouraging them to vote for these 20 individuals to represent Mr. Emmer at the CD-6 endorsing convention in 2016.

Exhibit 9.

**"Thomas Jefferson and Samuel Adams would not let  
Tom Emmer select their delegates"**

# EMMER for CONGRESS

Thank you for coming to the convention today!  
When it comes time to choose delegates for the Sixth District convention, the  
delegates below are great conservative activists and some of my key supporters.

The Emmer Campaign would appreciate your votes for these 20 individuals  
as your delegates to the Sixth District Convention.

- |                    |                   |
|--------------------|-------------------|
| ✓ Melissa Alber    | ✓ Paul Novotny    |
| ✓ Ken Anderson     | ✓ Dan Nygaard     |
| ✓ Brandon Burgoyne | ✓ Paul Seefeld    |
| ✓ Michael Burgoyne | ✓ Matt Stevens    |
| ✓ Robert Eidem     | ✓ Mac Thompson    |
| ✓ Ann Erickson     | ✓ Ron Touchette   |
| ✓ Dean Erickson    | ✓ Charles Vanha   |
| ✓ Pat Haley        | ✓ Jean Vanha      |
| ✓ Andrew Hulse     | ✓ Chad Westerberg |
| ✓ Judd Mowry       | ✓ Nick Zerwas     |

PAID FOR BY EMMER FOR CONGRESS

Paid for by AJ Kern For Congress

Figure 9. Congressman Emmer identifying the complainant Matt Stevens as a "Key Supporter" in 2016. This list of delegates was handed out to approximately 100 precinct delegates encouraging them to vote for these 20 individuals to represent Mr. Emmer at the CD-6 endorsing convention in 2014.



Exhibit 11:



**Matt Stevens**

August 8 at 12:02am · Elk River, MN

Best of AJ Kern's video about me

**Aj's nice words about me**

clipfromAJ Kern's youtube



YOUTUBE.COM

Like

Comment

Share



3

Top Comments



Write a comment...



**Eric Jon Boone** Thanks for clipping this down to the good stuff so we don't have to waste time on the rest!

Like · Reply · 2 August 8 at 7:51am



**Matthew J. Pagano** Still waiting for the progressive house remix version of this tirade

Like · Reply · 2 August 8 at 11:11am



**Paul Seefeld** Wow! Why?!

Like · Reply August 8 at 5:34am

Figure 11. Emmer staffer Matt Pagano encouraging Stevens on Facebook.

Exhibit 12.



Tom Emmer for Congress CD6 had a great turnout for the Victory Office opening. We appreciate the invitation and glad we could make it. On to victory this Tuesday and in November! Thanks Luke Yurczyk, Jim Knobloch, Jerry Relph, Matt Stevens, Dave Seitz, Jim Tuorila, Joanne Benson, Thomas Ellenbecker, Colin Haider, Tyler Newcombe, Paul Brandmire, Barbara Banaian, many other guests, and of course, my biggest supporter, Jacquie Samuel Emmer.



Like · Reply · August 7 at 6:47 pm

Figure 12. Congressman Tom Emmer on his campaign Facebook page thanking Matt Stevens for being there at the victory room on August 7th after he had filed his complaint against AJ Kern for Congress with the FEC.